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## BEFORE THE BOARD OF PATENT APPEALS
## AND INTERFERENCES

Application Number: 10/785,434
Filing Date: February 24, 2004
Appellant(s): WELCH, DAVID ARTHUR

_____
Brett Bornsen (46,566)
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/09/2011 appealing from the Office action

mailed 12/08/2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

1, 5, 6, 8-11, 15, 16 and 18-20.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal.  Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are

provided under the subheading "NEW GROUNDS OF REJECTION."

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**NEW GROUND(S) OF REJECTION**

</div>

N/A

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**WITHDRAWN REJECTIONS**

</div>

The following grounds of rejection are not presented for review on appeal

because they have been withdrawn by the examiner. N/A.

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 2005/0065753 A1 | Bigus et al. | 3-2005 |
| 2002/0039352 A1 | El-Fekih et al. | 4-2002 |
| 2004/0153823 A1 | Ansari | 8-2004 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

*1.*     **Claims 1, 8-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being**

**unpatentable over US 2005/0065753 A1 (Bigus et al.), and further in view of US**

**2002/0039352 A1 (El-Fekih et al.).**


As to Claims 1 and 11, Bigus et al. disclose a telecommunication system

configured to provide distributed system monitoring, the telecommunication system

comprising; and a method of operating a telecommunication system to provide
distributed system monitoring, wherein the telecommunication system comprises a
plurality of peer communication devices coupled to a control system, the method
comprising the steps of:

a control system (Bigus et al. disclose the computer system and software - ¶
[0010]); and

a plurality of peer communication devices, where each peer communication
device, responsive to handling telecommunications data, collects performance data and
transfers the performance data to the control system (Bigus et al. disclose the peer
wireless communications devices responsive to handling telecommunications data - ¶¶
[0031 and 0059] collecting performance metrics and sending them to a central control
system - ¶¶ [0010 and 0043]);

the control system, responsive to receipt of the performance data from the peer
communication devices, processes the performance data from each of the peer
communication devices to generate a performance file that indicates the performance of
each of the peer communication devices (Bigus et al. disclose, responsive to receiving
individual client performance metrics, analysis of said metrics and generation of reports
including fault status {red light condition} and data in numeric reports, indicating both
client performance as a function of overall system performance, and overall system
performance itself - ¶¶ [0053-0055 and 0063-0066]);

processes the performance file to compare {a client's} performance to the
performance of the other peer communication devices to detect a fault (Bigus et al.

disclose, responsive to receiving individual client performance metrics, analysis of said

metrics and generation of reports including fault status {red light condition} and data in

numeric reports, indicating both client performance as a function of overall system

performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

Bigus et al. do not disclose and transfers the performance file to each of the

communication devices; each of the communication devices, responsive to receipt of

the performance file, detect a fault; and responsive to detection of the fault, at least one

of the communication devices processes the performance file to identify at least one

recovery action, and performs the at least one recovery action to attempt to cure the

fault. However El-Fekih et al. disclose

and transfers the performance file to each of the communication devices (El-

Fekih et al. disclose the client service provider receiving performance report - ¶¶ [0010,

0034, 0068 and 0113]); and

each of the communication devices, responsive to receipt of the performance file,

detect a fault (El-Fekih et al. disclose the client service provider  taking corrective action

based on analysis of the performance report - ¶¶ [0010, 0034, 0068 and 0113]); and

responsive to detection of the fault, at least one of the communication devices

processes the performance file to identify at least one recovery action, and performs the

at least one recovery action to attempt to cure the fault (El-Fekih et al. disclose

identification and performance of corrective action - ¶¶ [0010, 0034, 0068 and 0113]).

It would have been obvious to one of ordinary skill in the art to combine and

transfers the performance file to each of the communication devices; each of the

communication devices, responsive to receipt of the performance file, detect a fault; and responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault, taught by El-Fekih et al., with performance monitoring taught by Bigus et al., in order to ensure service quality (El-Fekih et al. - ¶ [0006]).

As to Claim 8, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1, wherein:

each of the peer communication devices periodically transfers the performance data to the control system (Bigus et al. disclose periodic transfer - ¶¶ [0043 and 0062]).

As to Claim 9, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1

wherein the performance data includes a performance grade for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition}, grades of "red", "yellow" and "green" and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 10, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1

wherein the performance file includes a list of performance data for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 18, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11 wherein the step of transferring the performance data from each of the peer communication devices to the control system comprises the step of:

periodically transferring the performance data from each of the peer communication devices to the control system (Bigus et al. disclose periodic transfer - ¶¶ [0043 and 0062]).

As to Claim 19, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11

wherein the performance data includes a performance grade for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition}, grades of "red", "yellow" and "green" and data in numeric

reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 20, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11

wherein the performance file includes a list of performance data for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

*2.*    **Claims 5, 6, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Bigus et al. and El-Fekih et al., and further in view of US 2004/0153823 A1 (Ansari).**

As to Claims 5 and 15, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1, and the method of claim 11

wherein the at least one peer communication device […] by the at least one recovery action, […] by the at least one recovery action (El-Fekih et al. disclose identification and performance of corrective action - ¶ [0113]; Bigus et al. disclose the

peer wireless communications devices responsive to handling telecommunications data - ¶¶ [0031 and 0059]).

The combination if Bigus et al. and El-Fekih et al. does not disclose wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system. However, Ansari discloses

wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system (Ansari discloses determining if a fault is cured or not, generating a report and transferring the report to a control system - ¶¶ [0027-0029]).

It would have been obvious to one of ordinary skill in the art to combine wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system, taught by Ansari, with performance monitoring taught by the combination of Bigus et al. and El-Fekih et al., in order to provide diagnosis and assistance with self-healing in performance-monitored systems (Ansari - ¶ [0004]).


As to Claims 6 and 16, the combination of Bigus et al., El-Fekih et al. and Ansari discloses the telecommunications system of claim 5 the method of claim 15

wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the at least one peer communication device (Bigus et al. disclose the peer wireless

communications devices responsive to handling telecommunications data - ¶¶ [0031

and 0059]; Ansari discloses wherein the control system, responsive to receipt of the

report of the fault, identifies at least one recovery action - ¶¶ [0027 and 0029]; and

performs the at least recovery action on the at least one device - ¶ [0004]).

The motivation and obviousness arguments are the same as in Claim 5.


**(10) Response to Argument**

*1.*     **Overview of the combination of Bigus et al. and El-Fekih et al. as it teaches**

**independent claims 1 and 11.**


***Bigus et al. disclose:***

**a control system** (Bigus et al. disclose the computer system and software - ¶

[0010]); and

**a plurality of peer communication devices, where each peer**

**communication device, responsive to handling telecommunications data, collects**

**performance data and transfers the performance data to the control system** (Bigus

et al. disclose the peer wireless communications devices responsive to handling

telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and

sending them to a central control system - ¶¶ [0010 and 0043]);

**the control system, responsive to receipt of the performance data from the**

**peer communication devices, processes the performance data from each of the**

**peer communication devices to generate a performance file that indicates the**

**performance of each of the peer communication devices** (Bigus et al. disclose,

responsive to receiving individual client performance metrics, analysis of said metrics

and generation of reports including fault status {red light condition} and data in numeric

reports, indicating both client performance as a function of overall system performance,

and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]);

     **processes the performance file to compare {a client's} performance to the**

**performance of the other peer communication devices to detect a fault** (Bigus et

al. disclose, responsive to receiving individual client performance metrics, analysis of

said metrics and generation of reports including fault status {red light condition} and

data in numeric reports, indicating both client performance as a function of overall

system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-

0066]).

     In Bigus, the comparison of the client's performance against the performance

report occurs at the central controller in the sections cited by the Examiner. However,

Bigus makes it very clear in paragraph [0030] that "[T]he embodiments of the present

invention may be implemented in a stand-alone computing system or a distributed

computing system." Therefore, having the client perform the comparison of client

performance against the system performance report, although not explicitly disclosed,

would be obvious to one or ordinary skill in the art, and is also inherent within the Bigus

reference itself when you consider this passage in paragraph [0030]. *Bigus does not*

*disclose sending the performance report to clients, nor clients detecting a fault and*

*taking corrective action based on a received system performance report. For these*

*deficiencies, Examiner turned to El-Fekih et al.* Since Bigus discloses that embodiments

may be implemented by a distributed system, it is obvious and reasonable that one of

ordinary skill in the art would seek to have the client perform it's own performance

comparison against a system performance report, identify a fault, and take corrective

action so that the central controller is not overburdened by trying to process every

client's necessary corrections.

     **El-Fekih et al. disclose:**

     **and transfers the performance file to each of the communication devices;**

     **each of the communication devices, responsive to receipt of the**

**performance file, detect a fault; and**

     **responsive to detection of the fault, at least one of the communication**

**devices processes the performance file to identify at least one recovery action,**

**and performs the at least one recovery action to attempt to cure the fault** (El-Fekih

et al. disclose the client requesting a performance report, receiving said report,

detecting that corrections need to be made to the system, and making those corrections

- ¶¶ [0010, 0034, 0068 and 0113]. Paragraph [0010] discloses the client requesting the

performance report and receiving it, as well as determining whether the client's

expectations or standards are met. They are either met {not a fault}, or are not met (a

fault is detected}. Paragraph [0034] discloses that the client, based on the performance

report, manages the services, which necessarily means it controls and corrects any

deficiencies in the system to correct any performance issues. Paragraph [0068]

discloses that the client (in that embodiment the customer) shapes the traffic, which

illustrates client corrective action. Finally in paragraph [0113], discloses that after
receiving the performance report, if the network is deficient in some way, the client
makes the corrections).

By combining El-Fekih to Bigus, service quality is improved (El-Fekih et al. - ¶
[0006]), the central controller is not overburdened by trying to process every client's
necessary corrections.

Therefore, the combination of Bigus and El-Fekih teaches all of the limitations as
recited in independent claims 1 and 11, and the combination of the two references is
proper.


**2.      Examiner's Response to Appellant's arguments.**

**Argument A: (Brief at 9)**

Appellant argues that "there is no performance file sent back to the clients in
Bigus, and the clients are not able to detect their own internal faults based on a
performance file." (Brief at 9).

**Response to Argument A:**

Examiner respectfully points out that the Bigus et al. reference was not relied
upon to disclose the sending of the performance file to the clients, client fault detection
and client corrective action. *Bigus et al. do not disclose sending the performance report
to clients, nor clients detecting a fault and taking corrective action based on a received
system performance report. For these deficiencies, Examiner turned to El-Fekih et al.*
Bigus et al. disclose the peer wireless communications devices responsive to handling

telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and

sending them to a central control system - ¶¶ [0010 and 0043].  Since Bigus discloses

that embodiments may be implemented by a distributed system, it is obvious and

reasonable that one of ordinary skill in the art would seek to have the client perform it's

own performance comparison against a system performance report, identify a fault, and

take corrective action so that the central controller is not overburdened by trying to

process every client's necessary corrections. *El-Fekih et al. disclose the client*

*requesting a performance report, receiving said report, detecting that corrections need*

*to be made to the system, and making those corrections* - ¶¶ [0010, 0034, 0068 and

0113].  Paragraph [0010] discloses the client requesting the performance report and

receiving it, as well as determining whether the client's expectations or standards are

met.  They are either met {not a fault}, or are not met (a fault is detected}. Paragraph

[0034] discloses that the client, based on the performance report, manages the

services, which necessarily means it controls and corrects any deficiencies in the

system to correct any performance issues. Paragraph [0068] discloses that the client (in

that embodiment the customer) shapes the traffic, which illustrates client corrective

action.  Finally in paragraph [0113], discloses that after receiving the performance

report, if the network is deficient in some way, the client makes the corrections.

Furthermore, claims 1 and 11 do not require detection of "their own internal fault"

as argued. (Brief at 9, last paragraph).  The limitation in question recites "...processes

the performance file to compare its performance to the performance of other peer

communication devices to detect a fault." This limitation does not necessarily indicate

that the fault is within the peer communication device doing the comparison. Indeed the fault may be with the rest of the system and still fall within a reasonable interpretation of the claim language. All that is claimed is a detection of a fault, not a detection of the peer communication device's "own internal fault" as Appellant argues. Looking at the next limitation, the performance of the fault recovery action is not limited to corrective actions to be taken within the peer communication device itself. The limitation recites "responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault." Nowhere in this limitation is the requirement that the fault recovery action has to be taken at the peer communication device.

**Argument B: (Brief at 10)**

Appellant's argument against El-Fekih is that the client receiving the performance file is not the same client that sent performance data to the central controller. (Brief at 10).

**Response to Argument B:**

However, as stated above, the El-Fekih et al. reference alone was not cited to disclose the clients sending performance data to the central controller, so this alleged missing element is irrelevant to the rejection. Appellant's arguments are focused on trying to point out limitations not present in each reference, but not relied upon by Examiner. For instance, Appellant points out that Bigus does not transfer the performance files to the clients. However, Examiner acknowledged this deficiency, and

relied upon El-Fekih, not Bigus, to teach the limitation.  Similarly, Appellant points out

that El-Fekih does not receive performance information from the same clients that

receive the cumulative performance file. However, Bigus, not El-Fekih, was cited to

teach clients submitting performance information to the central control system.  So

instead of arguing against the combination cited as it was cited, Appellant seeks to

argue against each reference individually, without ever addressing the rejection as it

was made. In Bigus, the comparison of the client's performance against the

performance report occurs at the central controller in the sections cited by the

Examiner.  However, Bigus makes it very clear in paragraph [0030] that "[T]he

embodiments of the present invention may be implemented in a stand-alone computing

system or a distributed computing system." Therefore, having the client, rather than a

system administrator, perform the comparison of client performance against the system

performance report, although not explicitly disclosed, would be obvious to one or

ordinary skill in the art, and is also inherent within the Bigus reference itself when you

consider this passage in paragraph [0030]. So while Bigus discloses the clients sending

their performance data to the central controller (Bigus et al. disclose the peer wireless

communications devices responsive to handling telecommunications data - ¶¶ [0031

and 0059] collecting performance metrics and sending them to a central control system

- ¶¶ [0010 and 0043]), El-Fekih et al. disclose sending performance files to clients (El-

Fekih et al. disclose the client requesting a performance report, receiving said report,

detecting that corrections need to be made to the system, and making those corrections

- ¶¶ [0010, 0034, 0068 and 0113].  Paragraph [0010] discloses the client requesting the

performance report and receiving it, as well as determining whether the client's expectations or standards are met. They are either met {not a fault}, or are not met (a fault is detected}).Since Bigus et al. disclose that embodiments may be implemented by a distributed system, it is obvious and reasonable that one of ordinary skill in the art would seek to have the client, rather that a system administrator, receive a system performance report, perform it's own analysis of a system performance report to identify a fault, and take corrective action so that the central controller is not overburdened by trying to process every client's necessary corrections.

**Argument C: (Brief at 10)**

Appellant also argues that El-Fekih "teaches away from distributed monitoring by having the service management system analyze the performance data."

**Response to Argument C:**

This requirement is actually claimed. The limitation "the control system, responsive to receipt of the performance data from the peer communication devices, processes the performance data from each of the peer communication devices to generate a performance file that indicates the performance of each of the peer communication devices" *REQUIRES* the central system to analyze performance in order to create that performance report. The service management system in El-Fekih is a central control system, just as in the Appellant's claimed invention, and the third limitation of claim 1 recites "the control system, ... processes the performance data from each of the peer communication devices." Therefore, Appellant's control system analyzes the performance data. Perhaps what Appellant meant to argue is that El-Fekih

does not disclose the client analysis of the performance data, but as mentioned earlier,

Bigus discloses this limitation.

### Argument D: (Brief at 11)

Appellant argues that "neither reference describes that a centralized server

aggregates the performance data from multiple devices into a performance file, and

sends a performance file back to the devices that submitted the performance data in the

first place." (Brief at 11).

### Response to Argument D:

Appellant is arguing against the references individually by insisting that each

reference must necessarily disclose all of these limitations, which completely ignores

the combination of references as cited. As stated above, the combination of Bigus and

El-Fekih disclose these limitations. The combination of Bigus et al. and El-Fekih et al.

disclose send a performance file to the devices which submitted performance data, and

these devices would have to detect a fault and perform a recovery action using the

performance file. Specifically, Bigus et al. disclose the peer wireless communications

devices responsive to handling telecommunications data - ¶¶ [0031 and 0059] collecting

performance metrics and sending them to a central control system - ¶¶ [0010 and

0043]; and disclose, responsive to receiving individual client performance metrics,

analysis of said metrics and generation of reports including fault status {red light

condition} and data in numeric reports, indicating both client performance as a function

of overall system performance, and overall system performance itself - ¶¶ [0053-0055

and 0063-0066]).

Bigus et al. do not disclose and transfers the performance file to each of the communication devices; each of the communication devices, responsive to receipt of the performance file, detect a fault; and responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault. However El-Fekih et al. disclose the client requesting a performance report, receiving said report, detecting that corrections need to be made to the system, and making those corrections - ¶¶ [0010, 0034, 0068 and 0113]. In El-Fekih et al., paragraph [0010] discloses the client requesting the performance report and receiving it, as well as determining whether the client's expectations or standards are met. They are either met {not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses that the client, based on the performance report, manages the services, which necessarily means it controls and corrects any deficiencies in the system to correct any performance issues. Paragraph [0068] discloses that the client (in that embodiment the customer) shapes the traffic, which illustrates client corrective action. Finally in paragraph [0113], discloses that after receiving the performance report, if the network is deficient in some way, the client makes the corrections.

**Argument E: (Brief at 11)**

Appellant correctly acknowledges that both "Bigus and El-Fekih describe communication devices that submit performance data to a centralized server." However, Appellant goes on to argue that "neither of these references describes the centralized

server transferring a performance file back to each of the communication devices."
(Brief at 11).

**Response to Argument E:**

However, the combination of references disclose this claim requirement. El-Fekih
discloses the client requesting a performance report, receiving said report, detecting
that corrections need to be made to the system, and making those corrections - ¶¶
[0010, 0034, 0068 and 0113]. In El-Fekih et al., paragraph [0010] discloses the client
requesting the performance report and receiving it, as well as determining whether the
client's expectations or standards are met.  They are either met {not a fault}, or are not
met (a fault is detected). Paragraph [0034] discloses that the client, based on the
performance report, manages the services, which necessarily means it controls and
corrects any deficiencies in the system to correct any performance issues. Paragraph
[0068] discloses that the client (in that embodiment the customer) shapes the traffic,
which illustrates client corrective action.  Finally in paragraph [0113], discloses that after
receiving the performance report, if the network is deficient in some way, the client
makes the corrections.

**Argument F: (Brief at 12)**

Appellant's argues that the cited references fail to teach that "each of the peer
communication devices … processes the performance file to compare its performance
to the performance of the other peer communication devices to detect a fault" and
argues that "El-Fekih is flawed because El-Fekih does not describe a centralized server
that returns a performance file to communication devices" (Brief at 12).

**Response to Argument F:**

However, El-Fekih discloses the client requesting a performance report, receiving said report, detecting that corrections need to be made to the system, and making those corrections - ¶¶ [0010, 0034, 0068 and 0113]. In El-Fekih et al., paragraph [0010] discloses the client requesting the performance report and receiving it, as well as determining whether the client's expectations or standards are met. They are either met {not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses that the client, based on the performance report, manages the services, which necessarily means it controls and corrects any deficiencies in the system to correct any performance issues. Paragraph [0068] discloses that the client (in that embodiment the customer) shapes the traffic, which illustrates client corrective action. Finally in paragraph [0113], discloses that after receiving the performance report, if the network is deficient in some way, the client makes the corrections. Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066].

**Argument G: (Brief at 12)**

Appellant also argues that El-Fekih "do not have a performance file with which to compare its performance to the performance of other peer communication devices to detect a fault." (Brief at 12).

**Response to Argument G:**

However, Appellant is only looking to one reference in argument, when Examiner cited the combination of Bigus and El-Fekih to disclose these limitation as discussed above. Specifically, El-Fekih discloses the client requesting a performance report, receiving said report, detecting that corrections need to be made to the system, and making those corrections - ¶¶ [0010, 0034, 0068 and 0113]. In El-Fekih et al., paragraph [0010] discloses the client requesting the performance report and receiving it, as well as determining whether the client's expectations or standards are met. They are either met {not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses that the client, based on the performance report, manages the services, which necessarily means it controls and corrects any deficiencies in the system to correct any performance issues. Paragraph [0068] discloses that the client (in that embodiment the customer) shapes the traffic, which illustrates client corrective action. Finally in paragraph [0113], discloses that after receiving the performance report, if the network is deficient in some way, the client makes the corrections. Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066].

**Argument H: (Brief at 12)**

Appellant argues that "the centralized server does not send a performance file back to the network elements in El-Fekih as recited in claim 1." (Brief at 12).

**Response to Argument H:**

However, as stated above, El-Fekih was not cited to disclose the network

elements sending performance data to the central controller, Bigus was. Specifically,

Bigus et al. disclose the peer wireless communications devices responsive to handling

telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and

sending them to a central control system - ¶¶ [0010 and 0043]; and disclose, responsive

to receiving individual client performance metrics, analysis of said metrics and

generation of reports including fault status {red light condition} and data in numeric

reports, indicating both client performance as a function of overall system performance,

and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

Bigus et al. do not disclose and transfers the performance file to each of the

communication devices; each of the communication devices, responsive to receipt of

the performance file, detect a fault; and responsive to detection of the fault, at least one

of the communication devices processes the performance file to identify at least one

recovery action, and performs the at least one recovery action to attempt to cure the

fault. However El-Fekih et al. disclose the client requesting and receiving a performance

report, detecting that corrections need to be made to the system, and making those

corrections - ¶¶ [0010, 0034, 0068 and 0113].  In El-Fekih et al., paragraph [0010]

discloses the client requesting the performance report and receiving it, as well as

determining whether the client's expectations or standards are met.  They are either met

{not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses that the

client, based on the performance report, manages the services, which necessarily

means it controls and corrects any deficiencies in the system to correct any

performance issues. Paragraph [0068] discloses that the client (in that embodiment the customer) shapes the traffic, which illustrates client corrective action. Finally in paragraph [0113], discloses that after receiving the performance report, if the network is deficient in some way, the client makes the corrections.

**Argument I: (Brief at 13)**

Appellant argues that "neither of the references teaches that a central server sends a performance file back to communication devices which submitted performance data to the server", and "the client in El-Fekih is not equivalent to a 'peer communication device'". (Brief at 13).

**Response to Argument I:**

Once again, Appellant is arguing against the references individually instead of the combination as cited by the Examiner. Specifically, Bigus et al. disclose the peer wireless communications devices responsive to handling telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and sending them to a central control system - ¶¶ [0010 and 0043]; and disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

Bigus et al. do not disclose and transfers the performance file to each of the communication devices; each of the communication devices, responsive to receipt of the performance file, detect a fault; and responsive to detection of the fault, at least one

of the communication devices processes the performance file to identify at least one

recovery action, and performs the at least one recovery action to attempt to cure the

fault. However El-Fekih et al. disclose the client requesting a performance report,

receiving said report, detecting that corrections need to be made to the system, and

making those corrections - ¶¶ [0010, 0034, 0068 and 0113].  In El-Fekih et al.,

paragraph [0010] discloses the client requesting the performance report and receiving it,

as well as determining whether the client's expectations or standards are met.  They are

either met {not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses

that the client, based on the performance report, manages the services, which

necessarily means it controls and corrects any deficiencies in the system to correct any

performance issues. Paragraph [0068] discloses that the client (in that embodiment the

customer) shapes the traffic, which illustrates client corrective action.  Finally in

paragraph [0113], discloses that after receiving the performance report, if the network is

deficient in some way, the client makes the corrections.

**Argument J: (Brief at 13)**

Appellant argues that "[I]n order to teach claim 1, the centralized server in El-

Fekih would have to send a performance file back to the devices which submitted

performance data, and these devices would have to detect a fault and perform a

recovery action using the performance file." (Brief at 13)

**Response to Argument J:**

The combination of Bigus et al. and El-Fekih et al. disclose send a performance

file to the devices which submitted performance data, and these devices would have to

detect a fault and perform a recovery action using the performance file. Specifically,

Bigus et al. disclose the peer wireless communications devices responsive to handling

telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and

sending them to a central control system - ¶¶ [0010 and 0043]; and disclose, responsive

to receiving individual client performance metrics, analysis of said metrics and

generation of reports including fault status {red light condition} and data in numeric

reports, indicating both client performance as a function of overall system performance,

and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

     Bigus et al. do not disclose and transfers the performance file to each of the

communication devices; each of the communication devices, responsive to receipt of

the performance file, detect a fault; and responsive to detection of the fault, at least one

of the communication devices processes the performance file to identify at least one

recovery action, and performs the at least one recovery action to attempt to cure the

fault. However El-Fekih et al. disclose the client requesting a performance report,

receiving said report, detecting that corrections need to be made to the system, and

making those corrections - ¶¶ [0010, 0034, 0068 and 0113]. In El-Fekih et al.,

paragraph [0010] discloses the client requesting the performance report and receiving it,

as well as determining whether the client's expectations or standards are met. They are

either met {not a fault}, or are not met (a fault is detected}. Paragraph [0034] discloses

that the client, based on the performance report, manages the services, which

necessarily means it controls and corrects any deficiencies in the system to correct any

performance issues. Paragraph [0068] discloses that the client (in that embodiment the

customer) shapes the traffic, which illustrates client corrective action.  Finally in

paragraph [0113], discloses that after receiving the performance report, if the network is

deficient in some way, the client makes the corrections.

It would have been obvious to one of ordinary skill in the art to combine and

transfers the performance file to each of the communication devices; each of the

communication devices, responsive to receipt of the performance file, detect a fault; and

responsive to detection of the fault, at least one of the communication devices

processes the performance file to identify at least one recovery action, and performs the

at least one recovery action to attempt to cure the fault, taught by El-Fekih et al., with

performance monitoring taught by Bigus et al., in order to ensure service quality (El-

Fekih et al. - ¶ [0006]).

In response to applicant's arguments against the references individually, one

cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references.  See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986).

Appellant's arguments are directed to the Bigus reference individually, and the

El-Fekih reference individually, but do not address the combination of the two

references *as cited by the Examiner*.  Specifically, Examiner cited Bigus to disclose the

following limitations:

a plurality of peer communication devices, where each peer
communication device, responsive to handling telecommunications data, collects
performance data and transfers the performance data to the control system;

the control system, responsive to receipt of the performance data from the
peer communication devices, processes the performance data from each of the
peer communication devices to generate a performance file that indicates the
performance of each of the peer communication devices; and

processes the performance file to compare {a client's} performance to the
performance of the other peer communication devices to detect a fault.

Examiner cited El-Fekih to disclose the following deficiencies of primary
reference Bigus:

and transfers the performance file to each of the communication devices;

each of the communication devices, responsive to receipt of the
performance file, detect a fault; and

responsive to detection of the fault, at least one of the communication
devices processes the performance file to identify at least one recovery action,
and performs the at least one recovery action to attempt to cure the fault.

Appellant's arguments are focused on trying to point out limitations not present in
each reference, but the argued limitations were not relied upon by Examiner in the
references argued.  For instance, Appellant points out that Bigus does not transfer the
performance files to the clients.  However, Examiner acknowledged this deficiency, and
relied upon El-Fekih, not Bigus, to teach the limitation.  Similarly, Appellant points out

that El-Fekih does not receive performance information from the same clients that

receive the cumulative performance file. However, Bigus, not El-Fekih, was cited to

teach clients submitting performance information to the central control system.  So

instead of arguing against the combination cited as it was cited, Appellant seeks to

argue against each reference individually, without ever addressing the rejection as it

was made.


### (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/RICHARD G KEEHN/

Examiner, Art Unit 2456


Conferees:

/KEVIN  BATES/
Primary Examiner, Art Unit 2456


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Supervisory Patent Examiner, Art Unit 2456